



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Bencor-Petrifond-Casagrande

File: B-225408.2, B-225827

Date: April 10, 1987

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### DIGEST

Proposal preparation costs may be recovered where protester, who had substantial chance of receiving the award, was unreasonably excluded from consideration and no other remedy is appropriate.

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### DECISION

The Bureau of Reclamation, Department of the Interior, requests approval of an agreement between the Bureau and Bencor-Petrifond, a joint venture, settling a protest, B-225827, by Bencor-Petrifond and suggesting that our recommendation for corrective action in Bencor-Petrifond-Casagrande, B-225408, Mar. 6, 1987, 87-1 C.P.D. ¶ \_\_\_, involving another joint venture, is not practicable. We have treated the request for approval as a request for reconsideration of our recommendation, which we now modify.

In Bencor-Petrifond-Casagrande, B-225408, supra, we sustained a protest against the Bureau's award of a contract, without discussions, to Soletanche & Rodio under request for proposals (RFP) No. 6-SP-40-03900. The contract was for the fixed-price-construction of a concrete diaphragm wall in an abutment adjoining the Navajo Dam on the Colorado River storage project. We recommended that the Bureau open discussions and, if the evaluation of the resulting best and final offers established that the award of the contract to an offeror other than Soletanche was appropriate, that the Bureau terminate the contract and make another award.

On March 16, 1987, Bencor-Petrifond filed a protest against another Bureau of Reclamation procurement under RFP No. 7-SP-40-04900/DC-7710 for similar work at the Fontenelle Dam, Wyoming. This latter protest is premised, in part, on the contention that the Bureau provided the RFP to Bencor-Petrifond too late for Bencor-Petrifond to prepare its proposal.


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As part of the parties' proposed settlement, the Bureau and Bencor-Petrifond agree that termination of the existing contract on the Navajo Dam is not practicable, and Bencor-Petrifond agrees to accept its proposal preparation costs as an alternative remedy. The Bureau has extended the closing date on the Fontenelle Dam procurement to allow Bencor-Petrifond sufficient time to prepare its proposal. Bencor-Petrifond has agreed to withdraw the latter protest if this settlement is approved.

We allow the recovery of proposal preparation costs where the protester had a substantial chance of receiving the award but was unreasonably excluded from the competition and none of the remedies listed in our Bid Protest Regulations at 4 C.F.R. § 21.6(a)(2)-(5) (1986) is appropriate. Our recommendation in Bencor-Petrifond Casagrande, B-225408, supra, that the Bureau reopen the competition was based on the record then before us, which provided no evidence that such action would not be appropriate. This recommendation precluded award of proposal preparation costs.

The proposed settlement, however, reflects Bencor-Petrifond's agreement with the Bureau that the Navajo Dam project involves the safety of the dam and Bencor-Petrifond's concurrence that it would be impracticable for the Bureau to interrupt performance by terminating the contract and reawarding to another offeror. Absent evidence to the contrary, we have no basis to question this accord and conclude, therefore, that it would be impracticable for the Bureau to reopen the competition.

As no other corrective action is appropriate, and since we believe that Bencor-Petrifond would have had a substantial chance of award if the Bureau had held discussions in this procurement, Bencor-Petrifond may be allowed the recovery of its proposal preparation costs; the prior recommendation therefore is modified in that regard. The protest on the Fontenelle Dam project is closed without further action.

*for*   
Comptroller General  
of the United States